IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2006

CORAM

THE HONOURABLE MR.JUSTICE P.K.MISRA
and
THE HONOURABLE MR.JUSTICE J.A.K.SAMPATHKUMAR

Writ Appeal No.2205 of 2001

A.Abbas — Appellant
[Petitioner in WP.No.6565/95].

Versus

1. State of Tamil Nadu
rep. by its Secretary to Government
Adi Dravidar Welfare Department
Fort St.George, Chennai 9.

2.The Special Tahsildar (A.D.W)
Pollachi, Coimbatore District. — Respondents.
[Respondents in -do-].

Writ Appeal filed against the order in W.P.No.6565 of 1995 dated 31.08.2001.

WP.No.6565/95 presented under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records made in Sec.4[1] Notification issued in G.O.Ms.No.621, Social Welfare Department dated 21.2.1983 as published in T.N.Govt. Gazette [Extraordinary] Part II Section 2 dated 3.3.1983 and Section 6[1] Declaration made in G.O.Ms.NO.816, Social Welfare Department 3.3.1984 and published in T.N.Govt. Gazette [Extraordinary] Part II Section 2 dated 9.3.1984 in so far as they relate to the lands of the petitioner of an extent of 3.90 acres in A.K.Pudur Village, Udumalpet Taluk Coimbatore District and quash the same.

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For Appellant : Mr.S.Doraisamy

For Respondents : Mr.G.Sankaran
Special Government Pleader
for R1 and R2.

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ORDER

(Judgment of the Court was delivered by Justice P.K.MISRA)

Heard Mr.S.Doraisamy, learned counsel appearing for the appellant and Mr.G.Sankaran, learned Special Government Pleader appearing for respondents 1 and 2.

2. The present appeal is directed against the order of the learned Single Judge in W.P.No.6565 of 1995, whereunder the writ petition filed by the present appellant for quashing the Notification under Section 4(1) dated 21.02.1983 and for declaration under Section 6 of the Land Acquisition Act dated 03.03.1984 in so far as the land of the petitioner to the extent of 3.9 acres in A.K.Pudhur Village, Uthumalpet.

3. The main contention in support of such writ petition as culled out from the affidavit in support of the writ petition is to the following effect:

The writ petition filed by some other persons in respect of the very same Notification and declaration had been allowed and the matter had been remanded for fresh enquiry under Section 5(A) and thereafter fresh notice has been served on the appellant. However, the matter has not been finalised within the period of two years as contemplated under the Land Acquisition Act, 1984, as amended by Act 68 of 1994.

4. The learned Single Judge rejected such writ petition on the ground that this declaration has been made in 1984 and thereafter the award enquiry in so far as the present appellant is concerned, has been completed and even the award amount has been received by the present appellant. Thereafter, the matter was sought to be revived after a lapse of about one decade. Therefore, only on the ground of laches, such a writ petition was dismissed.

5. In this appeal, the learned counsel appearing for the appellant has raised a new ground to the effect that the matter has been remanded and thereafter fresh proceedings were completed in respect of the other persons who had filed the writ petitions in the High Court challenging such acquisition on the ground that after the validity of the Act 31 of 1978 was upheld by the Honourable Supreme Court by the Judgment dated 22.11.1994, no such proceedings under the Land Acquisition Act 1894, should have been completed and the proceedings should have been completed under the Act 31 of 1978. It is further submitted by the learned counsel that since in respect of two other persons, Section 6(1) declaration has been quashed, the same principle is applicable to the present appellant.

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6. Since this is a new question raised for the first time, we are unable to accept the submission. It is apparent that so far as the present appellant is concerned, the Land Acquisition proceedings had been initiated under Central Land Acquisition Act of the year 1894 and such Land Acquisition proceedings had been completed in the year 1985 itself. It is therefore not open to the present appellant to contend that the subsequent proceedings completed under the Central Act should be treated as illegal as such proceedings were completed after 22.11.1994. Since the present appellant had accepted the earlier Acquisition proceedings to be valid and had not challenged such proceedings for 10 years, even after receiving the award, it would not be open to the appellant to contend otherwise.

7. Even otherwise, the contention of the appellant that the entire Land Acquisition proceedings under one common notice must deemed to have been quashed by the earlier decisions of the High Court in respect of the writ petitions filed by the other affected persons, cannot be accepted in view of the decision reported in Abhey Ram vs. Union of India (AIR 1997 SC 2564). It is apparent that in the other two writ petitions have been filed by the other affected persons, the Court found that there was defect in the enquiry under 5-A of the Land Acquisition Act, 1984, and for the said reasons, the court had quashed the proceedings and directed for further enquiry.

8. In the fitness of thing, it must be construed that such decisions were confined to the persons who were approached the Court. It is not a case where the proceedings had been quashed on a ground common to all. The proceedings had been quashed because in respect of those persons mandatory provisions relating to 5-A enquiry had not been complied with.

9. It is true that there has been some subsequent 5-A enquiry wherein even the present writ petitioner has been summoned. Such procedure must be taken to clerical error. So far as the appellant is concerned, the Land Acquisition proceedings had been completed long back and there is no specific cause to reopen the Land Acquisition Proceedings so far as the present appellant is concerned. Merely because some subsequent notice has been issued by the clerical mistake, the present appellant cannot take advantage of the said fact.

10. For the aforesaid reasons, we do not find any merit in the writ appeal, which is liable to be dismissed.

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11. The learned counsel appearing for the appellant submitted that since in respect of the other persons, the Land Acquisition proceedings has been quashed, no useful purpose would be served by merely acquiring the lands of the present appellant as the purpose for which lands were acquired may not be served. It is not known as to what happened to the lands of the other persons. It may so happen that the proper authority might have proceeded to acquire the lands of other persons in accordance

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with the provisions contained under the Act 31 of 1978. In the absence of definite assertion in the writ petition and in the absence of materials, it would not be safe to observe anything on this aspect. However, in case it is found that the lands of other persons have not been subsequently acquired in accordance with the Act 31 of 1978 and the lands of the present appellant are not acquired, it would be open to the appropriate authority to consider the question of effecting re-conveyance of the land as contemplated under Section 48(B) of the Land Acquisition Act. It goes without saying if any representation is made by the appellant, such representation may be considered on its own merit. The present observation made by us should not be construed as expressing any opinion on such aspect.

12. Subject to the above observation, the writ appeal is dismissed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ksr

To
1.The Secretary to Government
Adi Dravidar Welfare Department
Fort St.George, Chennai 9.

2. The Special Tahsildar (A.D.W)
Pollachi, Coimbatore District.

+ 1 CC to the Government Pleader SR NO 51507

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